

SEPTEMBER 26, 2002

[Y.K. SABHARWAL AND H.K. SEMA, JJ.]

B

Penal Code, 1860; Section 302: Murder of 8 persons including children—Conviction on the basis of testimony of prosecution witness—Corroboration by circumstantial evidence—Correctness of—Held, one way of testing the veracity of the witness is simplicity of statement and consistency in the statement—It must be carefully scrutinized and tested—On facts, Held, evidence rightly relied upon by the Courts—Evidence Act, 1872:

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Trustworthiness of the prosecution witness—Prosecution witness present on the spot for the purpose of negotiation to resolve the dispute between his relation and accused—He rushed back to his native village to save his life from accused armed with weapons—Held, under the circumstances, nothing is unnatural in the behaviour of the prosecution witness—Hence his testimony is natural, trustworthy and wholly reliable.

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Sentencing:

Murder—Capital punishment—Justification—Held, admittedly crime committed in a heinous and brutal manner, but in the absence of evidence to the contrary that accused are menace to society, case does not fall within the category of rarest of rare case—Under the circumstances, sentencing of accused to rigorous imprisonment for life would meet the ends of justice.

E

Accused-appellant lodged a report in the Police Station about the murder of his two elder brothers and other family members including children by two unknown persons. During Police investigation, statement of PW3 (Brother-in-law of one of the deceased) was recorded under Section 161 Cr.P.C. It revealed that one of the deceased (Brother-in-law of PW3) had given his land on contract to his younger brother, accused-appellant who was not paying reasonable consideration amount. Thus his brother-in-law decided to give contract of the said land to some other person to get reasonable consideration amount. When accused-appellant came to know this fact, he threatened to eliminate him (the deceased). Further PW 3, and family members tried to persuade the accused-

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A appellant but he and another accused (Sarpanch) opposed it. In the meanwhile, PW3 went to the house of his sister for further negotiations and for convening a meeting of Panchayat on the next day to resolve the matter and stayed at her house, and slept on the roof. At midnight, he saw the appellant-accused accompanied by two other accused persons entering into the room of the deceased and then he heard firing sound. B He rushed towards his native village and disclosed about the incident to his family members. When they came on the spot, Police was already present there and investigating into the matter.

C The three accused were arrested, guns and other articles were recovered at the instance of the accused persons. Charges were framed against them under Section 460/302 read with Section 34 IPC and Section 30 of the Arms Act.

D Trial Court found them guilty of the offences charged and awarded capital punishment. The conviction and sentence was confirmed by the High Court. Hence these appeals.

E It was contended for the appellants that the presence of PW3 at the place of incident was not established, his behaviour was unnatural as after seeing the incident instead of informing the matter to police he preferred to rush back to his native village; that he slept on the roof on the fateful day, was also unnatural. All these circumstances rendered the testimony of PW3 unreliable; that the bullet injuries on the deceased appeared in quick succession could possibly be caused by terrorist by using AK-47 rifle; and that empty cartridges were planted by the prosecution after seizure of the guns by the police.

F Disposing of the appeals, the Court

G HELD: 1.1. The conviction and sentence of the appellants was based on the testimony of PW3 corroborated by other lending and clinching circumstances pointing the accusing finger to the appellants. In fact, the testimony of PW3 has been carefully scrutinized, tested and accepted by the Courts below. [629-A, B]

H 1.2. The testimony of PW3 is quite natural, trustworthy and wholly reliable. He was the relation of one of the deceased, there is no reason why he would falsely depose against the appellants and allow the real assailants escape unpunished. The presence of PW3 in the village on the fateful day

is quite natural because in his statement he has clearly stated that there was dispute over the land between his brother-in-law and the accused-appellant. Since it could not be resolved by persuasion, a Panchayat was to be convened on the next day. His not meeting any of the villagers would be no ground to throw away his testimony. [629-F, G] A

1.3. There are no hard and fast rules to test the veracity of the witnesses. One way of testing the veracity of the witness is the simplicity of the statement. Simplicity of the statement is indicative of the naturalness and truthfulness. Often the polished statement tendered by the witnesses is the product of coloured version. In the instant case, the simplicity of the testimony of PW3 reflects the naturalness and the truthfulness of the maker. It is not disputed that both the offensive weapons belong to accused. But this witness, both in his examination under Section 161 Cr.P.C. and testimony in the Court, had consistently stated that one of the accused was not armed whereas the other two accused were armed with weapons. [629-E, F, G] B C

1.4. PW3 sleeping on the roof of the deceased is quite natural as people used to sleep on the roof during hot season. The behaviour of PW3, after seeing the accused armed with weapons and hearing of firing, jumping from the roof and running towards his village to inform his family members instead of loitering around in the village and informing somebody risking his life, is quite natural. The incident had happened at 1.00 A.M. and that at that odd time, nobody would be readily available to be informed without loss of time. In the process, the life of the witness would be at great risk. [631-A, B, C] D E

1.5. The entire incident had taken place inside a room. Nobody had seen what had happened inside the room. As to how the deceased were killed and in what manner and fashion, nobody had seen, so also the time taken in the commission of the crime. But from the evidence of PW1 and PW2, it is clear that the deceased sustained gun shot injuries. At the same time, there was no evidence to show that the deceased had threat perception from terrorists. The theory of planting of empty cartridges by the prosecution is belied by the inquest report. [632-C, D; G] F G

1.6. It is significant to note that the accused never examined any witness to show that he had gone to the field to irrigate his land. He did not examine his wife, his mother (according to the prosecution story mother is still alive), nor anybody to prove his alibi. Believing the eye- H

A witness account of PW3, coupled with other formidable materials on record, the guilt of the accused has been established beyond the shadow of doubt, as held by the trial Court and confirmed by the High Court.

[634-B, C]

2. Having regard to the absence of evidence to show that the appellants are a menace to the society threatening the peaceful and harmonious co-existence of the society and they are likely to be a continuous threat to the society once they come out of incarceration, though the crime was committed in a heinous and brutal manner, but viewed from the facts and circumstances, it would be difficult to hold that the case falls within the category of "rarest of rare" cases. At the same time, there is no reason to believe that they cannot be reformed or rehabilitated. The appellants must be given a chance to repent that what they have done is neither approved by the law or by the society and be reformed or rehabilitated and become good and law abiding citizens. Hence sentencing of accused to rigorous imprisonment for life would meet the ends of justice and the same is awarded in place of the death sentence awarded by the Trial Court and confirmed by the High Court.

[634-G, H; 635-A, B, C]

Prakash Dhawal Khairnar (Patil) v. State of Maharashtra, (2002) 2 SCC 35 and *Ram Anup Singh and Ors. v. State of Bihar*, JT (2002) 5 621, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1229 of 2001.

From the Judgment and Order dated 24.7.2001 of the Punjab and Haryana High Court in 515-DB of 2000 and Murder Reference No.6/2000.

WITH

CRIMINAL APPEAL NO. 1228 OF 2001.

R.S. Cheema, H.L. Aggarwal and K.B. Sinha, Kawaljit Kochhar, K.S. Nalwa, S.C. Paul, Ms. Kusum Chaudhary for the Appellants.

Anoop G. Chaudhari, Bimal Roy Jad, Sunita Pandit, B.K. Khurana, Ms. Harpreet Kaur Dhillon, A.P. Mohanty, Dinesh Verma and Ms. Suresh Kumari, for the Respondent.

The Judgment of the Court was delivered by

SEMA, J. A bizarre tale of gruesome murder in which eight members of two families - Sukhwant Singh, wife Piar Kaur, daughters Gurjit Kaur (12 years) & Gogi (9 years) and Bhupinder Singh, wife Joginder Kaur, sons Harjinder Singh (6 years) & Bhupinder Singh (13 years), were eliminated by the appellants due to greed to grab the land of the deceased - Sukhwant Singh! The murder was engineered by the accused Bachittar Singh, the younger brother of the deceased. The story of 'Pahom' in Shakespere's play, "How much land does a man need?" is being repeated in these proceedings. Ultimately, the land required is a 'place for funeral pyre and burial'.

Recapitulation of brief facts is necessary. Accused Bachittar Singh had two brothers deceased Sukhwant Singh and Bhupinder Singh, who were elder to him. All the three brothers were residents of the Village Dholewala. Sukhwant Singh and Bhupinder Singh were residing in the Haveli, whereas accused Bachittar Singh was residing separately in the Village. On 19.4.1994, at about 6.30 A.M., daily diary report No. 35 was got recorded by Bachittar Singh, stating therein that during the night time he had gone to irrigate his land and when he came back at about 3 A.M., he received information from his wife - Rajbir Kaur, that during the night time, she had heard firing in the Village. Bachittar Singh, however, ignored it. At about 6.00 AM, his cousin Pipal Singh, s/o Balkar Singh came to his residence and reported to him that at about 1.00 AM two unknown persons had murdered Sukhwant Singh, Bhupinder Singh and their families. Thereafter, Bachittar Singh accompanied by Pipal Singh went to the house of his brothers and found his brothers - Sukhwant Singh and Bhupinder Singh murdered alongwith their wives and children. Pipal Singh was left there to guard the dead bodies and Bachittar Singh had gone to the Police Station to lodge a report and as per his statement daily diary report was recorded at 6.30 A.M.

As per the prosecution story, when the police was investigating the case on the spot, Joginder Singh (PW-3) son of Ajaib Singh, resident of village Mastewala came there and his statement under Section 161 Cr.P.C. was recorded by the police. In his statement, Joginder Singh stated that his sister - Piar Kaur was married to Sukhwant Singh about 15 years back. Sukhwant Singh was not keeping good health as he indulged in excessive drinking. Since he was not keeping good health, he had given his land on Theka to his younger brother - Bachittar Singh, but Bachittar Singh was not paying reasonable Theka. As the financial position of Sukhwant Singh was not sound and they were having difficulties in maintaining the family, Sukhwant Singh and Piar Kaur consulted PW-3 and other family members

A and decided that this time the land would not be given to Bachittar Singh on Theka. When this fact was brought to the notice of Bachittar Singh, he threatened to eliminate both his brothers along with their families and he refused to vacate the land. It is further stated that on last Thursday (before the incident) his sister -Piar Kaur visited the Village Mastewala and disclosed that the land was not to be given to Bachittar Singh. Joginder Singh along with his father and some persons had gone to the Village Dholewala along with Piar Kaur to have a talk with Bachittar Singh to vacate the land. It is stated that Bachittar Singh along with Malook Singh - Sarpanch, came to the house of Sukhwant Singh and Bachittar Singh was requested to vacate the land as Sukhwant Singh had minor children to support. Since Bachittar Singh was not giving reasonable theka, they wanted to give the land to Bhupinder Singh to cultivate. Bachittar Singh did not agree to this and replied that he would not vacate the land at any cost. Malook Singh - Sarpanch supported him stating that the land should remain with Bachittar Singh and they should not create any problem for him. Bhupinder Singh also requested Bachittar Singh to vacate the land, but without any result. Thereafter, Joginder Singh.

D his father and other members came back to Village Mastewala with the idea of further consultation in the matter. On 18.4.1994, Joginder Singh had gone to the house of Sukhwant Singh to enquire about the welfare of the family and to convene a Panchayat. After meals, Joginder Singh was sleeping on the roof, when at about 1.00 A.M. he heard firing from the side of deory. Then,

E he saw Bachittar Singh empty handed, Malook Singh - Sarpanch armed with .12 bore gun and Amarjit Singh @ Fauji armed with rifle. Malook Singh and Amarjit Singh were with muffled faces. He saw them in the electric light, which was on in the courtyard. At the instance of Bachittar Singh, Amarjit Singh @ Fauji had gone towards the room of Bhupinder Singh along with Bachittar Singh and got opened the doors. In the meantime, Malook Singh - Sarpanch had gone towards the room of Sukhwant Singh where the inmates of families were sleeping. The room was locked from inside. Malook Singh had managed to go inside the room by removing the left plank of the door. At this time, Joginder Singh heard firing from the rooms of Bhupinder Singh and Sukhwant Singh. He was empty handed. Out of fear he came down from the roof from the western side of the Haveli by jumping on the grass from the house of Sukhwant Singh. Joginder Singh then came straight to his Village - Mastewala and disclosed about the incident to his family members. Thereafter, Joginder Singh alongwith his family members came back to Village Dholewala and found the police on the spot. ASI Surinder Mohan prepared inquest report at 6.30 A.M. and also took into possession one piece of cloth, thatha.

H turban, empty cartridges etc. vide recovery memos. attested by the witnesses.

The accused - Bachittar Singh, Amarjit Singh and Malook Singh were arrested on 24.4.1994 and a black thatha was taken in possession. They were interrogated and suffered disclosure statements separately. A black turban and one DBBL gun were recovered in pursuance of the disclosure statement of Bachittar Singh. Right shoe was recovered in pursuance of disclosure statement of Amarjit Singh. One kamij (shirt), pyjama and a pair of shoes were recovered in pursuance of the disclosure statement of Malook Singh. Recovered articles were taken into possession vide different recovery memos, attested by the witnesses. After completing all the formalities, prima facie case was made out and the charges were framed under Sections 460/302 read with Section 34 I.P.C. and Section 30 of the Arms Act. The accused pleaded not guilty and claimed to be tried. To bring home the guilt of the accused, the prosecution examined as many as 24 witnesses, namely, Dr. Charanjit Singh PW1; Dr. Rachhpal Singh PW2; Joginder Singh PW3; Dr. Gian Singh PW4; Piara Singh PW5; ASI Gurbhej Singh PW6; H.C. Gurdial Singh PW7; Ajaib Singh PW8; Gurbinder Singh Patwari PW9; SI Surinder Pal PW10; A.S. Katari, JMIC PW11; Constable Karnail Singh PW12; Constable Kishan Chand PW13; H.C. Karamjit Singh PW14; SI Baldev Singh PW15; Surinder Singh, S.P.(H) PW16; Gursewak Singh Draftsman PW17; MHC Surinder Singh PW18; Pardeep Kumar Ahlmad PW19; Jagtar Singh PW20; Tarsem Singh, Arms Clerk PW21; ASI Surinder Mohan PW22; Inspector Balkar Singh PW23; and Jagjit Singh, Sub Station Operator, PSEB PW24.

The learned trial court, after thoroughly examining prosecution witnesses and the documents available on record, has come to the conclusion that the guilt of the accused has been established by the prosecution beyond the shadow of doubt. The learned trial court also afforded an opportunity to the accused of hearing on the quantum of sentence. While awarding Capital punishment, the following reasons have been assigned:

“Admittedly, all the accused are in custody with effect from 24.4.1994. Bachittar Singh accused is real brother of Sukhwant Singh and Bhupinder Singh deceased. Sukhwant Singh along with his wife and two minor children aged about 12 years and 9 years were eliminated. Bhupinder Singh along with his wife and two minor children aged about 6 years and 13 years were also eliminated. Land of Sukhwant Singh deceased was on Theka with Bachittar Singh. Bachittar Singh accused was not paying normal theka to his brother, whose financial position was not sound. Instead of helping his brother, Bachittar Singh was not agreeing to vacate the land. To grab the property Bachittar

- A** Singh hired two persons and eliminated two families. Accused had no respect for human life. Simply to grab the land of his brothers minor children were not spared. So, I am of the opinion that no question of leniency. In the first authority four persons were killed. Accused was convicted and sentenced to death. In the second authority Victims were sister-in-law of accused and her daughter of 8 years. In the case
- B** in hand during night time all the accused, as per story, had gone to the house of the deceased and eight persons were murdered, i.e. two complete families were eliminated. Present case is one of the rarest of the rare cases.”

- C** After hearing the parties on quantum of sentence, the learned trial court awarded Capital punishment to all the accused as under:

	Name of the accused	U/S	Sentenced to
D	Bachittar Singh, Malook Singh and Amarjit Singh	460 IPC	Undergo RI for Seven each years and to pay a fine of Rs. 10,000 each. In default of payment of fine to further Undergo RI for one Year each.
E	Malook Singh	302 IPC	Awarded death Sentence for causing Murder of Sukhwant Singh, Piar Kaur, Gurjit Kaur and Gogi
F	Bachittar Singh & Amarjit Singh Amarjit Singh	302/34 IPC 302 IPC	Awarded death sentence each Awarded death Sentence for Causing murder of Bhupinder Singh, Harjinder Singh, Devinder and Joginder Kaur.
G	Bachittar Singh and Malook Singh Bachittar Singh	302/34 IPC 30 Arms Act	Awarded death Sentence each To undergo RI for six Months.

- H** On appeal, the conviction and the sentence awarded to all the accused

was affirmed by the High Court and hence these appeals by special leave. A

PW-3 Joginder Singh is the sole eye witness. A perusal of the judgment of the trial court as well as the High Court would clearly show that both the courts examined the veracity of this witness and accepted his testimony as natural, truthful and reliable. The conviction and sentence of the appellants was based on the testimony of PW-3 corroborated by other lending and clinching circumstances pointing the accusing finger to the appellants. In fact, the testimony of PW-3 has been carefully scrutinized, tested and accepted by the two courts. B

We have heard Mr. R S Cheema, learned senior counsel for appellants in CrI. Appeal No. 1229 of 2001, Mr. K.B. Sinha, learned senior counsel for appellant in CrI. Appeal No. 1228 of 2001 and Mr. Anoop G. Choudhary, learned senior counsel for the State. C

Learned counsel for the appellants challenged the veracity of the testimony of PW-3 on various grounds. According to learned counsel, PW-3 came to the village Dholewale is not established as no one saw him in the village, including his aunt, who was also married in the same village. Learned counsel further stated that the behaviour of Joginder Singh is quite unnatural as after seeing the incident, instead of informing police or some villager, including his relative, he went straight to his village Mastewala and came back only the next morning. Learned counsel also contended that the statement of Joginder Singh, that on the fateful night he slept on the roof of Sukhwant Singh, is quite unnatural. According to the learned counsel taking all these circumstances into consideration, the testimony of PW-3 is wholly unreliable. We are unable to accept this contention of the appellants. On the other hand, we are clearly of the view that the testimony of PW-3 is quite natural, trustworthy and wholly reliable. He being the relation of Sukhwant Singh, husband of his sister Piar Kaur, there is no reason why he would falsely depose against the appellants and allow the real assailants escape unpunished. Converse would be quite unnatural. The presence of PW-3 in the village Dholewala on the fateful day is quite natural because in his statement it has come out clearly that there was a dispute over the land of Sukhwant Singh being given to Bachittar Singh on theka. Since it could not be resolved by persuasion, a Panchayat was to be convened the next day and it was to the knowledge of Bachittar Singh. His not meeting with any of the villagers would be no ground to throw away the testimony of PW-3. It is in his statement that he arrived at the village Dholawale at about 7.30 P.M. and H

A after having meals he went to retire at the roof of Sukhwant Singh. The incident had happened on 19th April, 1994 and at that time the place where the incident had taken place must have been quite warm and PW-3 sleeping on the roof of Sukhwant Singh is quite natural as this is the practice in most of the Indian villages for people to sleep on the roof during hot season. This witness further deposed that he was empty handed and after seeing the accused equipped with arms and hearing the firing sound he got frightened and ran to his village to inform his father and other members of the family. This is also quite natural. Having seen the accused armed with weapons, he might have suddenly realised that if he loiters in the village and that too at the odd hours, at 1.00 A.M., his life would be in danger. He, therefore, might have thought that to save himself from the clutches of the accused, instead of informing anybody in the village risking his life, he should inform his father and family. It appears from his statement that the witness had intervened to settle the dispute on several occasions to which accused Bachittar Singh objected and said that he would retain the field at any cost. Having realised the character and antecedents of Bachittar Singh, it is quite natural that after seeing the accused with formidable weapons, he decided not to risk his life and ran to his village. Thus we see nothing unnatural in the behaviour of PW-3.

There are no hard and fast rules to test the veracity of the witnesses.

E One way of testing the veracity of the witness is the simplicity of the statement. Simplicity of the statement is indicative of the naturalness and truthfulness. Often the polished statement tendered by the witnesses is the product of coloured version. In the instant case, the simplicity of the testimony of PW-3 reflects the naturalness and the truthfulness of the maker. As is seen from the prosecution story, Bachittar Singh was the king player as the dispute was between Bachittar Singh and Sukhwant Singh over the lease of the land on Theka. If the witness wanted to introduce the coloured version, he could have said that Bachittar Singh was armed with weapons. It is not disputed that both the offensive weapons, namely .12 bore gun and .303 bore rifle belong to Bachittar Singh. But this witness, both in his examination under Section 161 Cr.P.C. and testimony in the court, had consistently stated that Bachittar Singh was not armed whereas he stated that Malook Singh was armed with .12 bore DBBL gun and Amarjit Singh was armed with .303 rifle. This is clearly indicative of the naturalness and truthfulness of the testimony of PW-3. Ordinarily, interested witnesses tend to introduce coloured version and improvised statements to secure doubly sure conviction of the accused. This is not so in the present case.

Human behaviour vary from man to man. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a man would behave in a particular situation, can never be predicted. In the given circumstances, the behaviour of Joginder Singh PW-3 sleeping on the roof of the house of Sukhwant Singh: after seeing the accused armed with weapons and hearing of firing, jumping from the roof and running towards his village Mastewala to inform his father and family members instead of loitering around in the village Dholewala and informing somebody risking his life, is quite natural. One should not forget that the incident had happened at 1.00 A.M. and that at that odd time, nobody would be readily available to be informed without loss of time. In the process, the life of the witness would be at great risk.

From the prosecution evidence, it is clear that Amarjit Singh was helping Bachittar Singh. But why should PW-3 depose falsely against Amarjit Singh with whom he or his brother-in-law, deceased Sukhwant Singh had no dispute or enmity. The fact that it has come in the evidence of the prosecution witness that the accused Amarjit Singh was an army personnel and knew the handling of rifle would clearly indicate that he was a hired killer. We are, therefore, clearly of the view that the testimony of Joginder Singh, PW-3, is quite natural and trustworthy. We have no reason to take a view contrary to the view taken by the trial court and the High Court in this respect.

Dr. Charanjit Singh, PW-1 conducted Post Mortem of the deceased Sukhwant Singh and his family. Dr. Rachpal Singh, PW-2 conducted Post Mortem of the deceased Sukhwant Singh and his family. The High Court, in its impugned judgment, noted the injuries sustained by the deceased, as found in the Post Mortem reports by the two doctors as under:

“.....P.W-1 Dr. Charanjit Singh, who had conducted the post-mortem examination on the dead bodies of Gurjit Kaur, daughter of Sukhwant Singh deceased, and had found four gun shot injuries thereon (two of entry and two of exit). Gogi, Sukhwant Singh’s second daughter with two gun shot injuries thereon, Piar Kaur, his wife with three gun shot injuries (two of entry and one of exit) and Sukhwant Singh himself with two gun shot injuries (one of entry and the other of exit); PW-2 Dr. Rachpal Singh, who had conducted the post-mortem examination on the dead bodies of Bhupinder Singh and observed two gun shot injuries (one of entry and the other of exist), his son, Harjinder Singh, with two gun shot injuries (one of entry and the other of exit); another

A son, Devinder Singh, with two gun shot injuries (one of entry and the other of exit); and his wife, Joginder Kaur, with three gun shot injuries (two of entry and one of exit)."

B Learned counsel for the appellants strenuously urged that the injuries sustained by the deceased, as brought out in the evidence of PW-1 Dr. Charanjit Singh and PW-2 Dr. Rachhpal Singh, would clearly show that such injuries in quick succession could not have been caused by .303 bolt action rifle which require deliberate bolted action after firing every shot. Counsel suggested that possibly it is the handiwork of some terrorists using high velocity Rifle like AK 47 serials. This submission is mis-conceived. It is nobody's case that C the crime had been committed in a fixed particular time frame. As it is apparent from the evidence of the witnesses on record, the entire incident had taken place inside the room. Nobody had seen what had happened inside the room. As to how the deceased were killed and in what manner and fashion, nobody had seen, so also the time taken in the commission of the crime. But from D the evidence of PW-1 and PW-2, it is clear that the deceased sustained gun shot injuries. At the same time, no evidence to show that the deceased had threat perception from the terrorists. On the other hand Bachittar Singh, due to threat perception from the terrorists, had been given .303 calibre bolt action rifle No. 709467 for his personal security. This has been proved by PW-23 Balkar Singh. It is also not disputed that .12 bore DBBL gun bearing E No. 15354-88 belonged to accused Bachittar Singh.

Counsel for the appellants also contended that the empty cartridges, proved by Forensic Science Laboratory, said to have been fired from the said .303 rifle and .12 DBBL bore gun, are planted by the prosecution after the gun in question had been seized by the police. This contention is belied by F the inquest report conducted by PW-22 ASI Surinder Mohan (Ex. P.J.). From the inquest report, prepared by PW-22, it clearly appeared that the report was prepared on 19.4.1994 at 6.30 A.M. In clause 23 of the report, it is apparent that two empties of 3 x 3 bore gun were found near the dead body. In Ex. P.N./5 (inquest report), four empty cartridges of 3 x 3 pukki gun were found near the dead body. The theory of planting of empty cartridges by the G prosecution is, therefore, belied by the inquest report.

H The eye-witness account of PW-3 Joginder Singh has been corroborated with material particulars by the proved recovery and seizure memos. It is in the evidence of the prosecution that on 19.4.1994, one Thatha of black colour was recovered from the spot vide recovery memo Ex. PMM. The arrest of

Bachittar Singh led to the disclosure statement and recovery of black coloured turban was made. Both the sides of turban were found cut. The recovered turban was taken into possession vide memo Ex. PAAA/1 and his disclosure statement is Ex.PAAA/10. Accused - Amarjit Singh was also arrested on 24.4.1994 and on his personal search one thatha of black colour was recovered. The turban, thatha of black colour, recovered from the spot was sent to the laboratory and as per the report Ex. PNNN of the Forensic Science Laboratory, both that has - one recovered from the spot and the other on the personal search of accused Amarjit Singh, were similar to the cloth of the turban recovered in pursuance of the disclosure statement of Bachittar Singh. One empty of .12 bore gun was recovered from the spot on 19.4.1994 at 6.30 A.M. by ASI - Surinder Mohan. Three empties, three live cartridges and one DBBL gun No. 15354 were recovered in pursuance of the disclosure statement of Bachittar Singh. Recovered gun and the empties were sent to the Forensic Science Laboratory, Chandigarh. Vide report Ex. PVVV, two cartridges were found to be fired from the right barrel seized DBBL gun. The other two cartridges were found to be fired from the left barrel. It is not disputed that Bachittar Singh is the owner of the licenced gun. Licence of the gun had also been recovered vide memo Ex. PFF. Six empties of .303 bore rifle, recovered on 19.4.1994, were sent along with rifle No. 709467 to Forensic Science Laboratory, Chandigarh. Vide report Ex. PRRR of the Forensic Science Laboratory, empties were found fired from .303 bore rifle No. 709467. As already noticed, this rifle was provided to the accused - Bachittar Singh for his personal safety because of threat perception from terrorists, as proved by PW-23 Inspector Balkar Singh. The same rifle was used by the accused - Amarjit Singh.

One Jutti (shoe) was recovered from the scene of crime on 19.4.1994 at 6.30 A.M. As per the disclosure statement of accused—Amarjit Singh, second Jutti was also recovered. Both these Jutties were sent to Forensic Science Laboratory. Vide report Ex. PQQQ, Forensic Science Laboratory opined that one Jutti is tallying with the other.

‘Man proposes, God disposes’, is exactly what has happened here. What the accused thought that they were committing hidden crime without realising that they had left behind the clinching evidence against themselves.

Accused - Bachittar Singh in his report, as noticed above, had stated that on the fateful day he went to irrigate his field at night and came back at 3 A.M. when he received information from his wife that there was firing

A in the village but he ignored the same. He also stated that his cousin Pipal Singh, who was residing in the same Haveli, had come at 6 A.M. and informed him that at about 1 A.M. two unidentified persons had murdered the families of Sukhwant Singh and Bhupinder Singh. It is significantly enough to note that the accused - Bachitter Singh never examined any witness to show that he had gone to the field to irrigate his land and came back at 3 A.M. He did not examine his wife, his mother (according to the prosecution story mother is still alive), nor anybody to prove his alibi.

C Believing the eye-witness account of Joginder Singh, coupled with other formidable materials on record, as discussed above, we are clearly of the view that the guilt of the accused has been established beyond the shadow of doubt, as held by the trial court and confirmed by the High Court.

D This takes us to consider the death penalty awarded by the trial court and confirmed by the High Court. It is contended by the learned counsel for the appellants that the case does not fall within the category of "rarest of rare" which would invite capital punishment. On a perusal of the evidence and materials on record, we find that apart from the solitary incident in question, there is no evidence on record either oral or documentary, which would suggest about the mis-conduct of the appellants in the past. There is also no evidence on record to suggest that the appellants would be a menace and threat to the harmonious and peaceful co-existence of the society. In a case, what appears to be similar with the present one, *Prakash Dhawal Khairnar (Patil) v. State of Maharashtra*, [2002] 2 SCC 35 the accused had done to death his own brother, brother's wife and children out of land dispute. This Court held that no doubt the crime was heinous and brutal but at the same time it will be difficult to hold that it is rarest of rare case. The Court was also of the view that it would be difficult to hold that the appellant is a menace to the society and there is no reason to believe that he cannot be reformed or rehabilitated and that he is likely to continue the criminal acts of violence as would constitute a continued threat to the society. The same principle has been followed by this Court in *Ram Anup Singh & Ors. v. State of Bihar*, JT (2002) 5 621. In the case at hand also, we are of the view that having regard to the absence of evidence to the contrary that the appellants are a menace to the society threatening the peaceful and harmonious co-existence of the society and they are likely to be a continuous threat to the society if once they come out of incarceration, no doubt the crime was committed in a heinous and brutal manner but viewed from the facts and circumstances, as noticed above, it would be difficult to hold that the case

falls within the category of "rarest of rare". At the same time, there is no reason to believe that they cannot be reformed or rehabilitated. Viewed from the aforesaid perspective, we are of the opinion that the appellants must be given a chance to repent that what they have done is neither approved by the law or by the society and be reformed or rehabilitated and become good and law abiding citizens. A

In the facts and circumstances of the case, as stated above, we would think that sentencing them to rigorous imprisonment for life would meet the ends of justice. B

We, therefore, set aside the death sentence awarded by the trial court and confirmed by the High Court and instead award punishment of sentence to suffer rigorous imprisonment for life. C

In the result, the conviction of the appellants is upheld but the sentence of death awarded to the appellants is set aside. Instead, they are sentenced to undergo imprisonment for life. D

With this modification in sentence, the appeals are disposed of.

S.K.S.

Appeals disposed of.